



(Billing Code 5001-06-P)

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 225**

**RIN 0750-AH84**

**Defense Federal Acquisition Regulation Supplement: Preparation of Letter of Offer and Acceptance (DFARS Case 2012-D048)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to address the contracting officer role in assisting the DoD implementing agency in preparation of the letter of offer and acceptance for a foreign military sales program that will require an acquisition.

**DATES:** Comment Date: Comments on the proposed rule should be submitted in writing to the address shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]**, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2012-D048, using any of the following methods:

- o Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS

Case 2012-D048" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2012-D048." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2012-D048" on your attached document.

- o Email: [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2012-D048 in the subject line of the message.
- o Fax: 571-372-6094.
- o Mail: Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 571-372-6106.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD is proposing to amend DFARS 225.7302 to revise and move the text at PGI 225.7302(1) into the DFARS, because of potential impact on contractors.

## **II. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## **III. Regulatory Flexibility Act**

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. However, DoD has prepared an Initial Regulatory Flexibility Analysis, which is summarized as follows:

This action is necessary because the directions to the contracting officer at PGI 225.7302(1) may have impact on prospective contractors, and therefore require relocation to the DFARS.

The objective of this rule is to provide direction to the contracting officer on actions required to work with the prospective contractor to assist the DoD implementing activity in preparing the letter of offer and acceptance for a foreign military sales program that requires an acquisition. The legal basis for the rule is 41 U.S.C. 1303.

The rule will apply to approximately 380 small entities, based on the FPDS data for FY 2011 of the number of noncompetitive contract awards to small business entities that exceed \$10,000 and use FMS funds.

There is no required reporting or recordkeeping. The rule requires the contracting officer to communicate with prospective FMS contractors in order to assist the DoD implementing agency in preparation of the letter of offer and acceptance. The contracting officer may request information on price, delivery, and other relevant factors, and provide information to the prospective contractor with regard to the FMS customer.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD does not expect the rule will have a significant economic impact on a significant number of small entities. No significant alternatives were identified that would accomplish the objectives of the proposed rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (DFARS Case 2012-D048), in correspondence.

#### **IV. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### **List of Subjects in 48 CFR Part 225**

Government procurement.

**Manuel Quinones,**

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR part 225 as follows:

#### **PART 225 - CONTRACTING BY NEGOTIATION**

1. The authority citation for part 225 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

2. Revise section 225.7302 to read as follows:

**225.7302 Preparation of letter of offer and acceptance.**

For FMS programs that will require an acquisition, the contracting officer shall assist the DoD implementing agency responsible for preparing the Letter of Offer and Acceptance (LOA) by—

(1) Working with prospective contractors to—

(i) Identify, in advance of the LOA, any unusual provisions or deviations (such as those requirements for Pseudo LOAs identified at [PGI 225.7301](#));

(ii) Advise the contractor if the DoD implementing agency expands, modifies, or does not accept any key elements of the prospective contractor's proposal;

(iii) Identify any logistics support necessary to perform the contract (such as those requirements identified at [PGI 225.7301](#)); and

(iv) For noncompetitive acquisitions over \$10,000, ask the prospective contractor for information on price, delivery, and other relevant factors. The request for information shall identify the fact that the information is for a potential foreign military sale and shall identify the foreign customer; and

(2) Working with the DoD implementing agency responsible for

preparing the LOA, as specified in PGI 225.7302.

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